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OPINION

Our politicians must better respect the judicial independence of tribunals

It is unacceptable for a new government to stack tribunals with appointees who may have stronger political connections than judicial qualifications.

By **Gary Yee** Contributor

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Buffeted by the winds of political change, our adjudicative tribunals are often undervalued and misunderstood.

Sometimes described as “everyday justice,” this part of our justice system resolves many more disputes than the courts. For example, you may be a tenant whose possible eviction will be decided at the Landlord and Tenant Board, which has over 80,000 cases a year. Other busy tribunals deal with disability support benefits, human rights, immigration, labour, land use and so forth. Tribunal members have the same power as judges – to hold hearings, assess evidence and facts, and then make binding decisions that affect many individuals and communities.

Yet many elected leaders insist on politicizing or controlling the appointment and reappointment of tribunal members as if they were members of the government’s operational agencies or advisory boards. This means that an important part of our justice system is thrown into turmoil with every election cycle.

As a retired tribunal chair, I can talk about some insider truths that people in the system can’t or won’t talk about. Politicization or patronage in tribunals is not only unfair and scandalous – it also causes deep damage to our tribunal justice system. Imagine spending a few years to build and upgrade a nice house, only for big storms to knock it down every four years.

As people working in tribunals, we like to present ourselves as independent from politics and the government – and this is generally true. But on the inside, we dread the turmoil that happens in the year before and the year after an election. This literally means half of our time! This is a problem that crosses all party lines, and it is in the federal and provincial jurisdictions.

When potential job applicants think they may be subjected to decisions that are politicized or not based solely on merit, we end up with less quality and less diversity. The reality in the tribunal world is that a change in government often leads to many experienced members not being reappointed, with big gaps to fill the vacancies. These problems have been highlighted in the past few years in Ontario, where the gaps and turnover in adjudicators have caused a crisis in access to justice, including [unacceptable delays of two years or more in some tribunals](#).

Despite the challenges of delivering justice in this setting, there are many dedicated and empathetic adjudicators and staff who strive to address the needs of those appearing before the tribunal, especially diverse or self-represented parties. But when tribunals cannot rely on a qualified and stable group of members, it becomes harder to build excellence and promote consistency, or to try innovative approaches. A combination of long delays and inadequate expertise and experience can lead a tribunal to lose its legitimacy or credibility, both internally and externally. This will cause further harm to the many parties who rely on tribunals for justice.

How can we build a solid foundation for tribunal excellence and adjudicative independence that withstands political change? We must fundamentally transform how the public and the government see adjudicative tribunals. We are not like advisory boards or operational agencies — we are a key part of the justice system.

We only need to look to the U.S. to see how democracy suffers when judicial independence is not respected. It is unacceptable for a new government to stack the courts with appointees who may appear to have stronger political connections than judicial qualifications. The same should apply to tribunals that exercise judicial functions.

The damage to tribunals from politicization and the election cycle is more pervasive and serious than anyone really knows or talks about. It's hidden because tribunals and appointees are dependent on the government. This is why we need external advocates, not just retired tribunal chairs, to support the tribunal justice system. Those with power and influence, including the legal profession, have a responsibility to hold governments accountable to achieve true justice — and true tribunal excellence.

Gary Yee is a lawyer and former chair of four tribunals. He is on the steering committee of [Tribunal Watch Ontario](#).

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